IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.824 OF 2005

IN

NOTICE OF MOTION NO.3646 OF 2004

IN

L.C.S. NO.324 OF 2003

WITH

CIVIL APPLICATION NO.963 OF 2005

Dr.Mala Patil ...Appellant

Versus

Maharashtra Housing & Area

Development Authority ...Respondent

.....

Ms.Prachi Tatke i/b Mr.R.A.Thorat for Appellant.

Mr.A.R.Patil, A.G.P. for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2006.

P.C.

1. Heard Counsel for the parties.

2. By the impugned Judgment and Order, the lower Court has rejected the request of the

Appellant/Plaintiff for restoration of the Suit which was dismissed for default. Two reasons have been recorded. The first reason is that no purpose would be served by restoring the Suit, considering the scope of prayer clause (a) of the Plaint. The second reason is that no sufficient cause was made out for restoration.

3. Insofar as the second reason is concerned, I find substance in the stand taken by the Appellant/Plaintiff that the Court below has not adverted to the several documents pressed into service on behalf of the Appellant/Plaintiff to explain the circumstances in which the Suit went by default. The Court below has not examined the efficacy of those documents at all.

4. Be that as it may, as the Counsel for the Respondent Authority submits on instructions that the Authority has not taken any action on the basis of letter dated 16th January 2003, the period specified in the said letter has already expired long back. In the event, the Authority intends to take any action with regard to the suit property afresh, notice will be issued to the Appellant,

which will give rise to fresh cause of action for the Plaintiff. In that event, the Plaintiff may take recourse to filing of such proceedings, which will be proceeded on its own merits. In view of this submission of the Respondent, and while accepting the first reason recorded by the Trial Court in the impugned order, this Appeal from Order is disposed of by preserving the right of the Appellant/Plaintiff to take recourse to appropriate remedy as may be advised in the event, fresh notice for coercive action is issued by the Respondent Authority in posterity. Those proceedings will be decided on its own merits.

5. Appeal from Order and the cognate Civil Application disposed of accordingly.

A.M.KHANWILKAR, J.